

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Bell Telephone Company)	
)	
Application for Review)	98-0252
Of Alternative Regulation Plan.)	
)	98-0335
Illinois Bell Telephone Company)	
)	00-0764
Petition to Rebalance Illinois Bell Telephone)	
Company's Carrier Access and Network)	(Cons.)
Access Line Rates.)	
)	
Citizens Utility Board and)	
The People of the State of Illinois)	
-v-)	
Illinois Bell Telephone Company)	
)	
Verified Complaint for a Reduction in Illinois)	
Bell Telephone Company's Rates and Other)	
Relief.)	

**MCLEODUSA TELECOMMUNICATIONS SERVICES, INC.'S
BRIEF ON EXCEPTIONS TO THE
HEARING EXAMINERS' PROPOSED ORDER**

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I. SUMMARY OF MCLEODUSA’S EXCEPTIONS

The sole focus of McLeodUSA Telecommunications Services, Inc. (“McLeodUSA”) in this case is on the issue of the quality of wholesale service provided by Ameritech Illinois to competitive local exchange carriers (“CLECs”) such as McLeodUSA. Many of the CLECs operating in the nascent local service market provide service to retail customers using, in whole or in part, resold Ameritech services or unbundled network elements (“UNE”) obtained from Ameritech. As the Commission is painfully aware, to date the quality of wholesale service provided by Ameritech to its competitors, the CLECs, has been woefully inadequate at best.

McLeodUSA strongly believes that any alternative regulation (“alt reg”) plan adopted or continued by the Commission in this case must include provisions relating to the quality of wholesale service, in order to foster the development of a competitive market for local telecommunications services in Illinois. Specifically, if Ameritech is not required to provide the same quality of wholesale service to the CLECs that it is required to provide to retail customers, the inferior quality of Ameritech’s wholesale service will continue to be a barrier to development of a competitive local service market: Why would a retail customer take local service from a CLEC, whose ability to deliver quality service is dependent on the uncertain quality of Ameritech’s wholesale service, when the customer can take service from Ameritech and enjoy the benefits and protection of the strong retail service quality measures the Commission has imposed directly on Ameritech? Indeed, if the Commission does not modify the Hearing Examiners’ Proposed Order (“HEPO”) in accordance with McLeodUSA’s exceptions, the Commission’s final order in this docket may have the

unintended consequence of further inhibiting the development of an effectively competitive market for local telecommunications services.

Accordingly, McLeodUSA takes exception to three conclusions in the HEPO, with each exception based on the need to require Ameritech to provide a comparable quality of wholesale service to CLECs as it is required to provide to retail customers:

1. The HEPO concludes (as McLeodUSA recommended) that specific wholesale performance measures and remedies for Ameritech should be adopted in Docket 01-0120 (in which Condition 30 from the Commission's order approving the SBC-Ameritech merger is being implemented), rather than in this docket. (HEPO, p. 145) However, the HEPO fails to adopt the remainder of McLeodUSA's (and Commission Staff's) recommendation in this regard, namely, that ***the order in this case should specify that the wholesale performance measures and remedies adopted in Docket 01-0120 will become part of Ameritech's alt reg plan and will continue in effect as long as an alt reg plan remains in effect.***
2. The HEPO also states at page 145 that "The record in this proceeding is inadequate to address, in any meaningful way, the issues of wholesale service quality." Although, as noted above, McLeodUSA does not disagree with the conclusion that wholesale performance measures and remedies should be adopted in the Docket 01-0120, the quoted conclusion is **wrong**. There is ample evidence in this case demonstrating the inadequacies of Ameritech's wholesale service and the adverse impacts this has had and continues to have on the development of a competitive market, and on how this situation can be addressed through the adoption of specific wholesale service quality measures. The Commission **could**, if it wanted to, adopt wholesale performance measures for Ameritech in this docket, based on the record. At a minimum, the record supports requiring that the wholesale performance measures and remedy plan adopted in Docket 01-0120 shall be incorporated into Ameritech's alt reg plan.
3. The HEPO adopts specific requirements for compensation that Ameritech must pay to retail customers whose service is out for more than 24 hours, or whose service installation Ameritech fails to complete within 5 days. (HEPO, p. 139) These requirements are appropriate, but they do not go far enough: Ameritech must be required to provide the same compensation to its wholesale customers if a wholesale service element does not function with the result that a CLEC's retail customer's service is out for more than 24 hours, or

if Ameritech fails to complete a wholesale service installation within 5 days.¹ If parity in retail and wholesale customer compensation measures is not implemented, then the salutary introduction of specific customer compensation provisions for poor retail service will in fact become a further drag on the development of an effectively competitive local services market.

II. SPECIFIC EXCEPTIONS AND ARGUMENT

A. **The Commission Should Specify in *This* Order That the Wholesale Performance Measures and Remedy Plan Adopted in Docket 01-0120 Will Become Part of Ameritech's Alt Reg Plan and Will Continue in Effect for as Long as Alt Reg is in Effect for Ameritech**

The HEPO concludes its discussion of “Service Quality – Wholesale” in §VII.G.3 (p. 145) by stating:

We see no good reason to further expand the scope of this docket. The Commission will adopt McLeod’s proposal that we address issues concerning wholesale service quality in Docket 01-0120. Issues concerning wholesale service quality can also be addressed in a wide variety of other proceedings, as Ameritech Illinois observed. The record in this proceeding is simply inadequate to address, in any meaningful way, the issues of wholesale service quality.

McLeodUSA does not disagree with the proposed conclusion that issues concerning wholesale service quality be addressed in Docket 01-0120, which is the case in which Condition 30 of the Commission’s order approving the SBC-Ameritech merger (Docket 00-0555) is being implemented. Indeed, McLeodUSA supported this approach to the wholesale service quality issues raised in this case. (See McLeodUSA Rep. Br., pp. 2-3) However, the HEPO omits a *critical part* of McLeodUSA’s, and the Commission Staff’s, recommendation on this issue: If the Commission extends alt reg for Ameritech, it should incorporate the wholesale performance measures and remedies adopted in Docket 01-0120 into the alt reg plan, and retain those wholesale performance measures and remedies for as long as alt reg is in effect for Ameritech. (*Id.*, pp. 2-4; Staff Init. Br., pp. 67-69) Even though Docket 01-

¹ New §13-712(e)(4) of the Public Utilities Act, added by HB 2900, if signed into law, will require the Commission to establish such a requirement.

0120 is still in process, it is imperative that the Commission establish this requirement in the final order in *this* docket.²

Staff demonstrated in this case that the current alt reg plan clearly has failed to ensure that Ameritech meets its statutory service obligations, and that therefore the Commission should not extend alt reg for Ameritech without implementing more stringent, reliable and comprehensive measures designed to ensure that Ameritech meets its service quality obligations under alternative regulation. (Staff Init. Br., pp. 53-55) Both Staff and McLeodUSA's evidence detailed Ameritech's poor wholesale service quality performance, and showed that the current alt reg plan has not succeeded in ensuring that Ameritech meets statutory service quality standards. (See §II.B below; see also Staff Init. Br., p. 53; McLeodUSA Init. Br., p. 6; McLeodUSA Rep. Br., pp. 1-2) Staff emphasized that Ameritech's *wholesale* service quality deficiencies, as well as its retail service quality deficiencies, must be addressed. (See Staff Ex. 8.0, p. 14)

Accordingly, Staff recommended that wholesale performance measures be included in any extension of alt reg approved in this proceeding in a manner that will clearly result in the wholesale performance measures surviving the three-year limit on Condition 30 in the SBC-Ameritech merger order. Staff further recommended that the wholesale service quality plan adopted in this proceeding should use the same business rules and remedy plans for key measurements as defined and modified by the Condition 30 collaborative process and any resulting formal proceedings (*i.e.*, Docket 01-0120). Finally, Staff recommended that the

² The Condition 30 collaborative process established pursuant to the SBC-Ameritech merger order has been successful in developing a set of parity-based performance measures (*i.e.*, comparable performance measures are applicable to wholesale and retail service), although agreement has not been reached as to an appropriate set of remedies for Ameritech's failure to meet the performance measures. Development of an appropriate set of remedies is now the subject of Docket 01-0120. (See Staff Ex. 8.0, pp. 15-16)

wholesale performance measures should be in effect “as long as SBC/Ameritech Illinois has an alternative regulation plan, and as long as it is necessary for this Commission to ascertain that SBC/Ameritech Illinois is unable to provide discriminatory service to CLECs.”³ (StaffEx. 8.0, pp. 17-19; Staff Init. Br., pp. 67-69). McLeodUSA fully supported Staff’s recommendations. (McLeodUSA Rep. Br., pp. 4-5)

The fact that this proceeding is ready to be concluded and that Docket 01-0120 is still in progress does not mean that the issue of wholesale service quality should simply be sloughed off to the latter docket. The Commission should clearly specify in its order extending alternative regulation for Ameritech that the wholesale performance measures and remedies ultimately adopted in Docket 01-0120 will, when adopted via a final order in that docket, be automatically incorporated into Ameritech’s alt reg plan, and will continue in effect for as long as alternative regulation remains in effect for Ameritech. Including this provision in the order in this docket will establish the critical link necessary between the two dockets, and will insure that specific, enforceable wholesale service quality requirements for Ameritech do not get lost in the shuffle.⁴

B. The HEPO is Incorrect in Stating that the Record in This Case is Inadequate to Address the Issues of Wholesale Service Quality

As noted above, the HEPO states at page 145 that “The record in this proceeding is inadequate to address, in any meaningful way, the issues of wholesale service quality.” This

³ Mr. McClerren expressed concern that the SBC-Ameritech merger order could be construed as providing that Condition 30 will expire in October 2002, after which Ameritech would have even less incentive than it does today to improve its service quality, unless wholesale service quality requirements and remedies are incorporated into its alt reg plan. (See Staff Ex. 8.0, pp. 11-13)

⁴ McLeodUSA notes that new §13-801 of the Public Utilities Act, added by HB 2900, will, if signed into law, impose a number of specific wholesale service quality requirements on incumbent local exchange carriers such as Ameritech, and require the Commission to establish additional wholesale service quality requirements.

statement is incorrect. Substantial evidence was presented in this docket on Ameritech's wholesale service quality deficiencies and on specific measures that could be taken to address them in the context of extending Ameritech's alternative regulation plan. The record in this docket is sufficient to adopt specific wholesale service quality performance measures and remedies in this order, if the Commission were to decide to do so. The record in this docket is also sufficient to support a specific direction in this order (as recommended by McLeodUSA and Staff) that the wholesale performance measures and remedies ultimately adopted in Docket 01-0120 be incorporated into the Ameritech alt reg plan. Indeed, even the HEPO's summary of the evidence and arguments on this topic (HEPO, pp. 142-144), though incomplete, belies the assertion that the record in this docket is inadequate to address issues of wholesale service quality.

McLeodUSA's witness, Mr. Rod Cox, testified that because of Ameritech's monopoly on the services and facilities CLECs need in order to serve their customers in Illinois, McLeodUSA (and other CLECs) are dependent on Ameritech for the facilities they need to provide retail service in Illinois. (McLeod USA Ex. 1.0, p. 10) He explained that if Ameritech provides poor service, McLeodUSA is negatively impacted by its dependence on Ameritech. (Id., p. 11) McLeodUSA's customers are unaware that McLeodUSA must depend on Ameritech's facilities, service quality performance and standards. (Id.) For example, when a CLEC waits weeks for Ameritech to provide a line or restore service, the CLEC's customer waits as well. (Id.) McLeodUSA's customers blame McLeodUSA for Ameritech's service failures. (Id.) The resulting loss of customer good will can have a devastating impact on McLeodUSA's customer base and revenues, especially in light of McLeodUSA's entry level position in the retail market. (Id., p. 9)

Mr. Cox testified that Ameritech frequently misses performance benchmarks. Ameritech's service quality was bad for most of 2000, especially from June through September. (*Id.*, p. 6) Since October 2000, Ameritech has attempted to address some of its worst service problems, but has only succeeded in improving its service quality from "0" to "2" on a scale of "10." (*Id.*) However, Ameritech still has many service quality deficiencies, and wholesale customers such as McLeodUSA continue to experience, and be negatively impacted by, unacceptable levels of service quality. (*Id.*, p. 9)

As Mr. Cox explained, improving Ameritech's service quality is necessary for the development of competition in the telecommunications marketplace in Illinois. Poor wholesale service, even if it is at parity with Ameritech's retail performance, can harm a CLEC in at least four ways:

First, it often delays the CLEC's ability to recover its costs because the CLEC cannot bill a customer for services it does not deliver while waiting for Ameritech to install or repair its lines. Second, it imposes additional personnel costs on the CLEC. These costs include the staffing needed to deal with angry customers and the staffing needed to work through the ILEC escalation process to resolve the service problem. Third, it exposes the CLEC to potential liability for harm to the CLEC's customer. This can pose a significant financial hardship to CLECs such as McLeodUSA who are already incurring large capital costs associated with competitive entry. Finally and most disturbing, it can seriously damage the CLEC's reputation. For an incumbent monopoly with all the "last mile" facilities and over 95% market share, bad service can lead to bad press. For a new competitor trying to establish itself in the market and begin recovering costs associated with heavy capital investments, poor service can thwart the CLEC's ability to gain a foothold in local markets. A CLEC, struggling against the bottom line to carve out a niche in Ameritech's monopoly market, simply cannot long endure persistently poor service from its sole wholesale supplier. (*Id.*, pp. 8-9)

Mr. Cox urged the Commission to adopt the concept of "parity with a floor" in establishing standards of service quality that Ameritech should be required to meet for the provision of services and facilities to both its retail and wholesale customers. As he

explained, “parity with a floor” refers to two things. First, it means that Ameritech should provide wholesale service to its competitors at a quality level no worse than the level Ameritech provides to its retail customers – i.e., “parity.” Second, it means that Ameritech must meet or exceed an objective standard of quality for all of its customers, both retail and wholesale – i.e., the “floor.” The “floor” is the measure of service quality below which Ameritech’s services must not be allowed to fall. (Id., p. 10) As Mr. Cox explained, both “parity” and a “floor” are important to maintenance of a performance measurement program that will promote the development of competition and benefit customers. CLECs are dependent on Ameritech – their primary competition – for facilities they need to provide service in Illinois. This creates a situation that is ripe for anticompetitive discrimination by Ameritech. In light of this situation, parity standards, coupled with strong remedies, will discourage the kind of anticompetitive discrimination that the ILEC might otherwise engage in. (Id., pp. 10-11) Minimum quality standards – the “floor” – are equally important because parity at poor performance is still poor performance, and harms both the CLEC and the CLEC’s customers. Ameritech’s poor wholesale service damages the CLEC’s ability to establish itself in the marketplace, and ultimately harms the retail consumer. (Id., p. 11)

Other parties also presented evidence detailing Ameritech’s poor service quality performance and its impact on the development of the competitive market. Charlotte Terkeurst, witness on behalf of the Government and Consumer Intervenors, testified that Ameritech’s service quality performance has been chronically substandard, particularly since the commencement of the alt reg plan. She noted that “Almost immediately following adoption of alternative regulation, Ameritech Illinois’ service quality took a serious nosedive.” (GCI Ex. 2.0, p. 4) Ms. Terkeurst summarized data that demonstrated

Ameritech's declining and inadequate service quality (Id., pp. 4-6, 8-13), and recommended that "if alternative regulation is continued, the Commission should continue to apply pressure on SBC and Ameritech Illinois to immediately and permanently resolve the extensive service quality problems." (Id., p. 7) She testified that a detailed review of Ameritech's service quality performance should be a critical part of the Commission's evaluation of the terms and conditions of Ameritech's alt reg mechanism, and that the service quality mechanisms should be strengthened in a number of respects. (Id.)

Additionally, Staff witness Samuel McClerren detailed Ameritech's unsatisfactory service quality performance since January 1995, which he aptly described as "exasperating." (Staff Ex. 8.0, pp. 5-11) Mr. McClerren's analysis showed that the current alt reg plan has not succeeded in ensuring that Ameritech meets statutory service quality service standards. (See Staff Init. Br., p. 53) He noted that the substantial financial penalties imposed on Ameritech under Condition 30 to the SBC merger order, as well as the provisions of the alt reg plan, have not provided sufficient incentives to make it economic to Ameritech to fix its service quality problems. (Staff Ex. 8.0, pp. 11-12) Mr. McClerren emphasized that:

An ILEC should provide wholesale service to a CLEC in the same manner that it would provide service to its own end user customers. In effect, wholesale service should be provided on a nondiscriminatory basis, thereby providing a CLEC a meaningful opportunity to compete. (Staff Ex. 8.0, p. 14)

Although supporting Staff's recommendation that the wholesale performance measures and remedies adopted in Docket 01-0120 should be incorporated into any extension of Ameritech's alt reg plan, McLeodUSA also provided a specific set of 17 proposed performance measures in this docket, with specific, minimum-acceptable values for each measure, which the Commission could adopt in this docket. (McLeodUSA Ex. 1.1; see McLeodUSA Init. Br., pp. 8-10) Mr. Cox testified that these 17 performance measures are

key service quality measurements that Ameritech should be required to maintain at the “floor” values he proposed. (McLeodUSA Ex. 1.0, p. 12) McLeodUSA also indicated that, with a few possible modifications, the performance measures proposed by GCI witness Ms. Terkeurst would be acceptable as well. (McLeodUSA Init. Br., pp. 8-11)

In summary, contrary to the assertion in the HEPO, the record in this docket would support adoption of specific wholesale service quality performance measures for Ameritech in the final order in this case, should the Commission choose to adopt specific measures herein. The record on Ameritech’s service quality deficiencies, and on the adverse impact they have on CLECs and on the development of an effectively competitive market for local telecommunications services, fully supports McLeodUSA’s and Staff’s recommendation, namely, that the final order in this docket specify that the wholesale performance measures and remedies adopted in Docket 01-0120 shall be incorporated into Ameritech’s alt reg plan and shall continue in effect for as long as alt reg remains in effect for Ameritech.

C. The Customer Compensation Provisions Adopted in the HEPO Should Also Be Made Available to Ameritech’s Wholesale Customers

At page 139, the HEPO adopts specific requirements for Ameritech to compensate customers if (i) a service outage is not restored within 24 hours or (ii) a service installation is not completed within five business days. While these are important provisions and will be directly beneficial to retail customers, they do not go far enough. Specifically, Ameritech should also be required to provide the same compensation to its wholesale customers, the CLECs, when their wholesale service, or a UNE, purchased from Ameritech is out of service with the result that a CLEC’s retail customer’s service is out for more than 24 hours. Similarly, Ameritech should be required to provide the same compensation to a CLEC if the installation or initiation of a wholesale service or a UNE takes more than five business days.

Extending the proposed compensation mechanisms in this manner is important for at least two reasons. First, if Ameritech is required to provide compensation for service outages greater than 24 hours and service installations that take more than five business days only to its own retail customers, Ameritech will be given a competitive advantage over its competitors, the CLECs: The potential retail customer will be more likely to choose Ameritech for local service needs, since service from Ameritech will come with a Commission-imposed insurance policy. No such insurance policy will be available with service from a CLEC, unless the CLEC volunteers to compensate the customer out of its own pocket for service problems that are the result of Ameritech's wholesale service deficiencies. The Commission's salutary action of requiring that compensation be provided to Ameritech retail customers for Ameritech's service deficiencies would thus have the unintended consequence of putting a further damper on the development of the competitive market for local services. Second, extending the compensation requirement to wholesale services would ultimately benefit the end user since the CLEC will be able to pass the Ameritech compensation on to the entity that is ultimately affected by Ameritech's service quality problems, namely, the end user.⁵

⁵New §13-712 of the Public Utilities Act, added by HB 2900, will, if signed into law, require the Commission to adopt rules establishing specific standards for retail service quality, including requirements for a carrier to compensate a retail customer if the customer's basic local exchange service is out for more than 24 hours, or if installations of basic local exchange service are not completed within specified time periods. New §13-712(e)(4) specifically provides that if the violation of a basic local service quality standard is caused by a carrier other than the carrier providing service to the retail customer (i.e., is caused by a wholesale provider), the carrier serving the retail customer shall compensate the customer, and the wholesale carrier that caused the violation shall reimburse the retail customer's carrier. This new statutory requirement is, in essence, what McLeodUSA is proposing here. New §13-712(c) gives the Commission one year to promulgate the service quality and customer compensation rules. However, there is no need to wait one year to impose a

III. SPECIFIC PROPOSED LANGUAGE CHANGES TO THE HEPO

For the reason stated in §II.A and B above, the paragraph under “Commission Analysis and Conclusion” on page 145 of the HEPO should be deleted in its entirety and replaced with the following text:

The Commission agrees with Staff and McLeodUSA that the record reflects serious deficiencies in Ameritech’s provision of wholesale services to its competitors, the CLECs. The Commission also agrees that Ameritech’s wholesale service deficiencies should be addressed in the context of extending Ameritech’s alternative regulation program. Since Docket 01-0120 is already open and in progress for the purpose of adopting wholesale performance measures and remedies for Ameritech, and in fact a set of wholesale performance measures has already been agreed to by the parties in that docket, the Commission agrees that it is appropriate to defer to the specific wholesale performance measures and remedies adopted in Docket 01-0120. The Commission concludes, however, that the wholesale performance measures and remedies that are finally adopted by the Commission in Docket 01-0120 shall be incorporated into Ameritech’s alternative regulation plan that is approved in this Order. The Commission also concludes that, unless modified in a future order of the Commission entered after notice and hearing, the wholesale performance measures and remedies adopted in Docket 01-0120 shall remain in effect for as long as an alternative regulation program is in effect for Ameritech.

In addition, for the reasons set forth in §II.C above, the following paragraph should be added at the bottom of page 139 of the HEPO, after the statement of the customer compensation requirements for “OOS>24 misses” and “Installation Within Five Days misses”:

The Commission also concludes that Ameritech should be required to provide the same compensation to a wholesale customer as shown above when (1) wholesale service or an unbundled network element provided to a CLEC is out of service with the result that one or more customers of the CLEC lose service for the time periods shown above under “For OOS>24 misses”; or (2) if Ameritech fails to complete installation or initiation of a wholesale service or unbundled service to a CLEC within the number of business days shown above under “For Installation Within Five Days misses.” If Ameritech is not required to make the same compensation to its wholesale customers, the CLECs, for

wholesale-to-retail carrier compensation requirement on Ameritech; the Commission can and should impose this requirement in its order in this case, as McLeodUSA recommends.

service quality problems as it is required to provide to its own retail customers for essentially the same types of service quality problems, then taking service from a CLEC would become less attractive to a retail customer, Ameritech would be given a competitive advantage, and the development of an effectively competitive market for local telecommunications services would be dampened.

IV. CONCLUSION

The Commission should incorporate McLeodUSA's exceptions to the Hearing Examiners' Proposed Order into the final order in this case.

Respectfully submitted,

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TABLE OF CONTENTS

I.	SUMMARY OF MCLEODUSA’S EXCEPTIONS.	1
II.	SPECIFIC EXCEPTIONS AND ARGUMENT.	3
A.	The Commission Should Specify in <i>This</i> Order That the Wholesale Performance Measures and Remedy Plan Adopted in Docket 01-0120 Will Become Part of Ameritech’s Alt Reg Plan and Will Continue in Effect for as Long as Alt Reg is in Effect for Ameritech.	3
B.	The HEPO is Incorrect in Stating that the Record in This Case is Inadequate to Address the Issues of Wholesale Service Quality.	5
C.	The Customer Compensation Provisions Adopted in the HEPO Should Also Be Made Available to Ameritech’s Wholesale Customers.	10
III.	SPECIFIC PROPOSED LANGUAGE CHANGES TO THE HEPO.	12
IV.	CONCLUSION.	13